



DEPARTMENT OF
GENERAL SERVICES

COMMONWEALTH of VIRGINIA

DIVISION OF PURCHASES and SUPPLY
1111 EAST BROAD STREET, 6th FLOOR, RECEPTIONIST/BID RECEIVING, RICHMOND, VA 23219

REQUEST FOR SEALED PROPOSAL (RFP) # E194-79435 UNMANNED AERIAL SYSTEM SERVICES NIGP Commodity Code: 03596

ISSUE DATE: April 6, 2018 • DUE DATE/TIME: May 31, 2018 – 1:00 P.M. EASTERN DAYLIGHT TIME
PROPOSALS RECEIVED AFTER THE DUE DATE AND TIME WILL NOT BE CONSIDERED
PROPOSALS WILL NOT BE ACCEPTED BY FAX OR EMAIL

DPS Statewide Sourcing & Contracting Officer: Matthew Fritzingler, VCO
E-mail: matthew.fritzingler@dgs.virginia.gov

USING AGENCIES: All Commonwealth of Virginia agencies, institutions of higher education, or other public bodies as defined in *Code of Virginia* §2.2-4301, to include private institutions of higher education chartered in Virginia as defined in *Code of Virginia* §2.2-1120, NASPO ValuePoint Participating Entities, and any other public bodies which may be added through participating addendum to any Agreement.

PROPOSALS THAT DO NOT MEET THE MANDATORY QUALIFICATION REQUIREMENTS IN SECTION IX.B “CONTRACTOR REQUIREMENTS” MAY BE REMOVED FROM CONSIDERATION.

TERM: Two (2) year initial term with up to four (4) additional one-year renewal options.

PRE-PROPOSAL CONFERENCE: An Optional Pre-proposal Conference will be held at **2:00 PM Eastern Daylight Time on April 17, 2018**, at the Patrick Henry Building, 1111 East Broad Street, 1st Floor, DPS Training Room, Richmond, VA 23219. Potential Offerors who intend to submit a proposal are encouraged to attend in person or via teleconference. Any changes to the RFP will be issued in an amendment, which must be signed and included in the Offeror’s proposal. Refer to Section VI for information.

CLARIFICATION OF RFP: It is the Offeror’s sole responsibility to 1) Contact DPS Statewide Sourcing & Contracting Officer, Matthew Fritzingler, **in writing**, with questions about the specifications or other solicitation documents **no later than 5:00 PM Eastern Daylight Time on May 3, 2018. Verbal requests for information will not be accepted.** Any revisions to the solicitation will be made only by amendment; and 2) Obtain all current information (i.e., amendments, notifications, extensions, changes, cancellation, or awards) from the eVA website <http://www.eva.virginia.gov> and clicking on “Solicitations, Quick Quotes and Awards.”

Contracts will be awarded to eVA registered vendors only. Refer to Attachment B Item X for registration information.

AWARD POSTING: Upon the award or announcement of a notice to award a Contract as a result of this solicitation, the Commonwealth of Virginia through the Department of General Services, Division of Purchases and Supply, will publicly post such notice online at <http://www.eva.virginia.gov> for a minimum of ten (10) calendar days.

The undersigned hereby offers and agrees to furnish all goods and/or services in accordance with the attached signed proposal and the mandatory requirements outlined herein or as mutually agreed upon through subsequent negotiation.

Company Name: _____
Address: _____
City/State/ZIP: _____
Signature: _____
Printed Name: _____
Title: _____
Date: _____

Email: _____
Telephone: _____
Fax: _____
Cell: _____
eVA Vendor ID Number : _____
DSBSD Number (if applicable): _____
Vendor SCC ID Number: _____

This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.e in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that request for proposal.

RETURN OF THIS PAGE IS REQUIRED

UNMANNED AERIAL SYSTEM SERVICES

RFP# E194-79435

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I. PURPOSE

The Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply (“Commonwealth” or “DGS” or “DPS”) is issuing this formal request for sealed proposal (“RFP”) # E194-79435 for the purpose of establishing one or more Master Ordering Agreements (“Master Agreement” or “Contract” or “Agreement”) to be established through competitive negotiation with experienced qualified firms for the provision Unmanned Aerial Systems (Drones) as a Service, hereinafter referred to as “Services.” The initial term of the Agreement will be two (2) years with four (4) additional one-year renewal options.

Any Contract resulting from the RFP will be an optional use Agreement established and managed by the Commonwealth of Virginia as the Lead State. Services resulting from any contract awarded through this solicitation will be available on an “as-needed” basis under the same cost and terms and conditions agreed to in the Master Agreement to all Commonwealth state agencies, institutions of higher education, and other public bodies and entities authorized to use the Master Agreement, pursuant to §§ 2.2-4301 and 2.2-4304 of the *Code of Virginia*, including private institutions of higher education chartered in Virginia as defined in *Code of Virginia* §2.2-1120 and granted tax-exempt status under *Internal Revenue Code* §501(c)(3); and NASPO ValuePoint Participating State governments (i.e., departments, agencies, institutions, etc.) institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the U.S., and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.

All authorized ordering entities described above are to be collectively referred to as “Authorized Users.”

II. DEFINITIONS

The following definitions apply to this solicitation. Additionally, [Attachment A](#) contains definitions of terms used in the NASPO ValuePoint Master Agreement Terms and Conditions and in this solicitation.

- **Authorized Users** means any public body, as described in Section I, Purpose, which has the ability and authority to utilize the resulting contract and request goods or services against the resulting contract.
- **Contractor** means the person or entity delivering products or performing services under all contractual provisions stipulated under any Master Agreement(s) resulting from this RFP.
- **Department of Small Business and Supplier Diversity (DSBSD)** means the Commonwealth of Virginia agency dedicated to enhancing the participation of small, women- and minority-owned businesses in Virginia’s procurement process.
- **Drone or UAS** means any unmanned aerial vehicle piloted by the Contractor
- **eVA** means the Commonwealth of Virginia’s Internet electronic procurement solution website portal <http://www.eva.virginia.gov> that streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with Commonwealth of Virginia state agencies and public bodies. Reference Attachment B Item X entitled “eVA Business-To-Government Vendor Registration, Contracts, and Orders” for important information on eVA. Obtain more information on eVA at www.eva.virginia.gov and click on “I Sell to Virginia”.

- **FAA** means the Federal Aviation Administration.
- **Lead State** means the state that a) develops and issues the Request for Proposal (RFP); b) centrally manages the sourcing and negotiation process; c) awards the resulting contract(s), if any, which result from the sourcing process, and; d) manages or administers any resulting contract(s) thereafter, over the full term/s of any agreement(s). In this procurement, the Lead State is the Commonwealth of Virginia and all questions, comments, or any other communication regarding this RFP shall be directed solely to the DPS Statewide Sourcing & Contracting Officer named on the face of this solicitation.
- **Master Ordering Agreement** or **Master Agreement** means the underlying agreement executed by and between the Commonwealth, acting on behalf of NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
- **NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia.
- **Offeror** means the company or firm submitting a proposal in response to this RFP.
- **Order** or **Purchase Order** means any eVA order, purchase order, sales order, contract, or other document used by a Participating Entity to order the products and services on the Master Agreement.
- **Participating Addendum** means a bilateral agreement executed by a contractor and a Participating Entity, which incorporates a Master Agreement resulting from this solicitation, and any other additional Participating Entity-specific language or any other requirements (e.g., ordering procedures, other terms and conditions, or other business practices that are specific to the Participating Entity).
- **Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- **Participating State** means any state, the District of Columbia, or any of the territories of the U.S. that are listed in the RFP as intending to participate. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.
- **Primary Service Zone** means the Service Zone which the Offeror identifies as their main Service Area.
- **Product** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to the Master Agreement(s). The terms products, supplies and services, and products and services are used interchangeably in this RFP.
- **Proposal** means the official written proposal submitted by an Offeror in response to this Request for Proposal.

- **Purchasing Entity** means a state, city, county, district, other political subdivision of a state, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- **Request for Proposal or "RFP"** means the entire solicitation document, including all parts, sections, exhibits, attachments, and amendments.
- **Small Business** means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business. (*Code of Virginia, § 2.2-4310*)
- **Service** means any time or labor involved in completing the missions requested pursuant to the Master Agreement(s). The terms products, supplies and services, and products and services are used interchangeably in this RFP.
- **Service Categories** means the distinct identified categories of service as defined in the Statement of Needs. These may entail specific mission assignments for Services.
- **Service Zone** means the group of states bundled into zones identified in the Statement of Needs, Zone Requirements. These zones may change based upon information received during the RFP process which shall be communicated via an official Addendum to the solicitation.
- **Sourcing Team** means a group comprised of subject matter experts and procurement experts from Participating Entities that are most likely to use any resulting Master Agreement(s).

III. OBJECTIVE

The objective of this RFP is to obtain the best value and achieve the most favorable pricing for all Services described herein. The savings realized by the Contractor in managing one comprehensive contract with a collective volume of purchases rather than numerous state and local entity contracts should result in the most attractive discounts available in the marketplace; therefore no Offeror, should expect that any proposal will be fully considered for any potential contract award unless the pricing structure and overall value offered through this RFP process is far more aggressive than any current or potential pricing structure and overall value provided to any other public or private entity, either individually or cooperatively.

While the primary purpose of this solicitation is to select an Offeror who can provide services for all Participating Entities, an Offeror is permitted to submit a proposal on more limited geographical areas, but not less than one entire service zone. An Offeror's proposal must clearly describe the geographical limits by service zone if proposing a geographical area less than that of all of the Participating States. If an Offeror elects to submit a proposal for a single zone, then the Offeror must be willing to provide Services to the entire service zone and will not be allowed to add additional states following award; however, a Contractor may request adding states during the renewal process. More information about this can be found in Section IX. Statement of Needs, Subsection C. Zone Requirements.

This RFP is designed to provide an interested Offeror with sufficient information to submit a proposal meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are encouraged to expand upon the specifications to add service and value consistent with Participating Entities' requirements; therefore, any submitted proposal should:

1. Be fully complete;
2. Be comprised of leading edge business processes and practices;
3. Be demonstrably more effective and efficient than any current statewide processes; and
4. Consist of extremely aggressive pricing.

IV. LEAD STATE, SOLICITATION NUMBER AND CONTRACT ADMINISTRATOR

The Commonwealth of Virginia is the Lead State and issuing office for this solicitation and all subsequent amendments relating to it. The solicitation reference number is RFP# E194-79435. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

An Offeror and any interested persons shall direct all questions **in writing**, concerning the procurement process to the DPS Statewide Sourcing & Contracting Officer including all technical requirements of the RFP, contractual requirements, requests for approval, change, clarification, the award process, and any other questions arising from this solicitation, and any resulting Master Agreement(s), if any. The Commonwealth's DPS Statewide Sourcing & Contracting Officer, identified below, is the Lead State Contract Administrator and single-point-of-contact during the entire procurement process and for any resulting contracts.

Matthew Fritzinger, VCO
DPS Statewide Sourcing & Contracting Officer
Commonwealth of Virginia
Department of General Services, Division of Purchases and Supply
1111 East Broad Street
Richmond, VA 23219
Email: matthew.fritzinger@dgs.virginia.gov
Phone: 804-786-0078

V. SCHEDULE OF EVENTS

The planned schedule of events for this solicitation is as follows and times listed are for the Eastern Time Zone:

- Solicitation Release: April 6, 2018
- Pre-Proposal Conference: April 17, 2018 at 2:00 P.M. EDT
- RFP Question Deadline: May 3, 2018
- Answer Questions Submitted Deadline: May 11, 2018
- Closing Date: May 31, 2018 at 1:00 P.M. EDT
- Anticipated Award Date: October 31, 2018

The above schedule is for planning purposes only and may be changed at the sole discretion of the Commonwealth at any time. In the event this schedule changes, the Commonwealth may post public notice of such a change on the Commonwealth's eVA e-Procurement website.

VI. PRE-PROPOSAL CONFERENCE

An optional Pre-proposal Conference will be held at **2:00 P.M.** on **April 17, 2018**, at the Patrick Henry Building located at 1111 East Broad Street, 1st Floor, DPS Training Room, Richmond, VA 23219. The purpose of this conference is to allow any potential Offeror an opportunity to present questions and obtain clarification relative to any facet of this solicitation. While attendance at this conference will not be a prerequisite to submitting a proposal, a potential Offeror is encouraged to attend in person or via teleconference. Any changes to the solicitation resulting from this conference will be issued in an amendment that must be signed and included in the Offeror's proposal. **Copies of the RFP will not be provided at the conference; therefore, participants should bring a copy for reference purposes.**

Teleconference participants must use the instructions provided below and are advised to start dialing no later than 1:50 P.M. to ensure a telephone connection at the start of the teleconference. There will be no technical assistance available if a connection cannot be made.

1. Dial-in Number **866-842-5779**
2. When prompted, enter Conference Code **2935452878** followed by the # key

An email notification should be sent to matthew.fritzinger@dgs.virginia.gov to indicate whether participation will be in person or via teleconference no later than **12:00 P.M. EDT** on **April 13, 2018**. Participants must allow ample time for parking, walking to the building and for security screening procedures. All visitors are required to enter the building through the Darden Garden entrance facing the State Capital (not the Broad Street entrance). When entering the Patrick Henry Building, visitors will be required to:

- Present a valid and current picture ID;
- Pass through metal detectors / security wands; and
- Permit all bags to be searched by Capital Police or security personnel.

Should any attendees show up or call in after 2:00 PM EDT, information already discussed will not be repeated.

It is strongly encouraged that written questions are submitted in advance of the pre-proposal conference no later than **12:00 P.M. EDT** on **April 13, 2018**.

VII. BACKGROUND INFORMATION - COMMONWEALTH OF VIRGINIA

The activity surrounding UAS and its application for public use have quickly emerged over the past several years, and the technology, its use, and the governance and oversight for their use have evolved rapidly, and is expected to continue to do so for the foreseeable future. It is often not practicable or feasible for a public body that is in need of such technology – and for any variety of specialized purposes, to acquire, maintain, or operate these products, and then to keep up with these rapidly changing aspects surrounding these products and their use.

The Commonwealth envisions the possibility that the use of UAS products may be acquired and services performed through a contracted service provider, without the necessity of having to purchase products, maintain and operate a fleet of aircraft, train and hire specialized pilots or

maintenance staff, replace and frequently upgrade the equipment, become experts in this technology, or otherwise become an owner of such equipment and develop the necessary requirements to organize, and retain the requisite staff, train, license and certify such staff, and ensure the necessary technical expertise to maintain such equipment.

The intent of the RFP is principally to support the needs of Commonwealth, state and local government entities, institutions of higher education, or any other public body, as defined in § 2.2-4301 of the Code of Virginia. However, and in the event that any agreement may be established, then the Commonwealth also intends that Services may be made available for ordering and use by other participating states through the National Association of State Procurement Officials (NASPO) ValuePoint Cooperative Purchasing Program, and in accordance with the Code of Virginia § 2.2-4304 of the Virginia Public Procurement Act (VPPA), entitled “Joint and cooperative procurement” in order to obtain the most optimal cost savings and/or reductions in administrative expense for the overall benefit of the Commonwealth and its Public Bodies.

Additionally, and consistent with Virginia Code § 2.2-4300, the Commonwealth’s intent is also to help ensure that all qualified vendors have access to public business and that no Offeror be arbitrarily or capriciously excluded, and that competition is sought to the maximum feasible degree. Therefore, and pursuant to Virginia Code § 2.2-1110, this Request for Proposal is being posted on the Commonwealth’s central electronic procurement website (“eVA”) to ensure maximum feasible visibility and access to the Commonwealth’s procurement opportunities. All other NASPO Participating States are also encouraged to post this solicitation on their own respective websites or public posting areas in order to maximize transparency and competition for all qualified vendors.

The Commonwealth intends to establish multiple master agreements, which is deemed practicable for management reasons, and to meet the objectives to allow access to this opportunity by all qualified vendors; ensure competition to the maximum feasible degree, and; ensure openness and administrative efficiency for enabling management of any resulting contracts, thereby enabling the Commonwealth to acquire the highest quality Services available and at the most reasonable cost to meet its mission and needs in accordance with Virginia Code 2.1-4300, C.

Potential required missions include, but is not limited to, emergency support (law enforcement, fire) including disaster support, roadway and bridge inspections, aerial mapping, land inspections, and video production services. These missions may support a variety of agencies across the Commonwealth of Virginia and participating NASPO ValuePoint states. A few of the agencies in the Commonwealth which may use this contract include, but are not limited to:

- Virginia Department of Aviation
- Virginia Department of Emergency Management
- Virginia Department of Transportation
- Virginia Department of Forestry
- Virginia Department of Mines, Minerals and Energy
- Any of the 15 public four-year colleges and universities, one two-year college, or 23 community colleges.

Similar agencies and departments of the participating NASPO ValuePoint states may also request similar missions.

VIII. BACKGROUND INFORMATION - NASPO VALUEPOINT

- A. NATIONAL ASSOCIATION OF STATE PURCHASING OFFICIALS (NASPO): NASPO is a non-profit association dedicated to strengthening the procurement community through

education, research, and communication. It is a state contracting consortium made up of the chief procurement officers of the central procurement offices in each of the 50 states, the District of Columbia, and the territories of the U.S. The NASPO ValuePoint Cooperative Purchasing Organization, LLC is a nonprofit subsidiary of NASPO, which facilitates administration of the cooperative group contracting consortium for the benefit of state departments, institutions, agencies, political subdivisions, and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.). For more information, reference the following websites www.NASPOValuePoint.org and www.naspo.org.

- B. **PARTICIPATING STATES:** In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement(s): California, Connecticut, Oklahoma, Montana, and Utah. NASPO ValuePoint permits other entities to become Participating Entities after award of the Master Agreement(s). State-specific terms and conditions that will govern each Participating State's Participating Addendum may be incorporated into the Participating Addendum after award.
- C. **ANTICIPATED USAGE:** This will be a new Master Agreement(s) for the Lead State and NASPO ValuePoint; therefore, there is no usage data or information available. No minimum or maximum level of sales volume is guaranteed or implied in any awarded Master Agreement(s) made under this RFP.

IX. STATEMENT OF NEEDS

A. General Requirements

Any and all photographs, videos, data gathered, data analyzed, and reports generated shall be the sole property of the Authorized User.

The Contractor shall be able to provide support for a variety of missions within the below defined Service Categories. The missions will be defined and coordinated between the Authorized User and the Contractor. The requested missions may require additional analysis or support to assist with the completion of the mission and will be coordinated between the Authorized User and the Contractor. These missions may include but not be limited to the following Service Categories:

- A. **Emergency Support Services**
 - a. Emergency responses will fall within three (3) categories of response.
 - i. Rapid response times shall be responses to emergency situations required within 1 to 4 hours or as quickly as possible.
 - ii. Priority response times shall be responses to emergency situations required within 24 hours or potentially more quickly.
 - iii. Routine response times shall be responses to emergencies, which shall normally occur within 72 hours.
 - b. These response hours may vary based on the specific situation and required missions and should be discussed by the Contractor and Authorized User.
 - c. Active natural disaster support missions:
 - i. Active natural disaster support missions will involve active natural disasters as identified and declared by the Authorized User.
 - ii. Supporting these missions may require extended personnel support and may involve a greater degree of difficulty and danger posed to all personnel involved.

- iii. These natural disasters may include but are not limited to:
 1. Forest fires
 2. Floods
 3. Avalanche
 4. Hurricane
 5. Earthquake
 6. Tornado
 7. Drought
 8. Nuclear emission events
 - iv. Natural disaster support services may also help bring situational awareness to First Responders and Disaster Relief teams actively working on the ground. Situational awareness may be coordinated efforts between the Authorized User and the Contractor to warn those on the ground of potential hazards or threats that may be out of their immediate line of sight.
 - v. Contractors may also be requested by Authorized Users to provide post disaster evaluation support services. This may involve the collection of photographs, videos, or other data in order to assess relief efforts or evaluate a disaster's effects on the area.
 - vi. These missions may require specialized equipment in order to support the mission of the Authorized User. Specialized equipment which may be requested includes but not limited to:
 1. High definition cameras and video recording devices
 2. Radiation detection devices
 3. Aerial sonar devices
 4. Infrared and heat detection devices
 5. Night vision apparatus
 - d. Active firefighting support missions:
 - i. These missions may involve supporting local fire departments during an active fire. These fires may be in a building, vehicle, boat, or any other location that a fire may occur and be actively burning.
 - ii. Contractors shall work closely with, and solely under the direction of, local fire departments to provide aerial pictures and video to help direct efforts of fire personnel to extinguish the fire.
 - iii. These missions may require specialized equipment in order to support the mission of the Authorized User. Specialized equipment which may be requested includes but not limited to:
 1. High definition cameras and video recording devices
 2. Infrared and heat detection devices
- B. Law Enforcement Support Services:
 - a. In order to support law enforcement agencies, Contractors may be required to provide background checks on all employees assigned to work on missions. The Contractors shall keep and maintain a list of current employees with current background checks eligible to work on law enforcement missions. Background check requirements may vary from state to state. The Contractors shall refer to each State's Participating Addendum or the Authorized User's Order for guidance on what is required to support law enforcement missions.
 - b. These missions may vary greatly as requested by the law enforcement agencies to include but not limited to:
 - i. Surveillance
 - ii. Reconnaissance
 - iii. Accident support
 - iv. Accident recreation support
 - v. Search and Rescue

- c. These missions may be highly sensitive in nature and may require the Contractor to sign a Non-Disclosure Agreement, or other legally binding agreements, as their support may directly impact an ongoing investigation.
 - d. It will be the responsibility of the requesting law enforcement agency to comply with all federal, state, and/or local laws with regard to the use of Unmanned Aerial Vehicles in support of law enforcement missions. Law enforcement agencies will not request the Contractor to violate any parts of 14 CFR Part 107, which may compromise the Contractor's ability to maintain the required FAA licenses.
 - e. Contractors shall not be held responsible for performing missions under the direction of law enforcement officials if those missions are deemed to have violated federal, state, or local laws. The Contractor shall not violate any part of 14 CFR Part 107 in order to support law enforcement operations without written permission from the FAA. The Contractor must notify the requesting law enforcement agency, in writing, if they are asked to perform a mission they know will violate 14 CFR Part 107 without permission from the FAA.
 - f. These missions may require specialized equipment in order to support the mission of the Authorized User. Specialized equipment which may be requested includes but not limited to:
 - i. High definition cameras and video recording devices
 - ii. Infrared and heat detection devices
 - iii. Thermal imaging cameras
 - iv. Night vision cameras
 - v. Radiation detection devices
 - g. Search and rescue missions are typically but not exclusively initiated by local law enforcement. These missions are often highly sensitive and urgent in nature. They often involve the following:
 - i. Search and rescue missions will involve assisting an Authorized User with the location of lost or missing persons.
 - ii. These missions may involve a variety of terrains, weather patterns, times of day, or cover a large geographic location, in an attempt to help locate and rescue missing or lost persons.
 - iii. These missions may require specialized equipment in order to support the mission of the requesting public body. Specialized equipment which may be requested includes but not limited to:
 - 1. High definition cameras and video recording devices
 - 2. Infrared cameras
 - 3. Thermal imaging cameras
 - 4. Night vision cameras
 - 5. Radiation detection devices
- C. Construction and Infrastructure Support Services
- a. These services may include the collection of photographs, videos, and/or data for the purpose of evaluation, planning, and development of land. This land may have existing structures such as buildings and roads, or be undeveloped.
 - b. Land Surveying and Aerial Mapping Missions
 - i. As permitted by state and local laws, Contractors may be requested to perform land surveying and/or aerial mapping of specific geographic locations. These surveys may also include the delineation of wetlands or other features.
 - ii. If it is requested that the Contractor perform land surveying through the use of Aerial Lidar, then the contractor shall perform all services in compliance with the appropriate standard unless otherwise specified by the Authorized User.
 - 1. American Society for Photogrammetry and Remote Sensing (ASPRS) – LAS Specification Version 1.4 – 2011 or most current version

2. US Geological Survey, National Geospatial Program (USGS NGP) – Lidar Base Specifications Version 1.2 – 2014 or most current version
 3. Federal Geographic Data Committee (FGDC) – National Spatial Data Infrastructure (NSDI) Geospatial Positioning Accuracy Standards, Part 3: National Standard for Spatial Data Accuracy – 1998 or most current version
 4. National Digital Elevation Program (NDEP) – NDEP Guidelines for Digital Elevation Data – 2004 or most current version
 5. FGDC – FGDC Endorsed ISO Metadata Standards – 1998 or most current version
 6. FEMA Standards for Flood Risk Analysis and Mapping – FP 204-078-1 (Rev 4) approved November 30, 2015, SID# 40, 43, 46 or most current version
 7. FGDC – United States National Grid – 2001 or most current version
 8. Or Future Industry standards which may not yet be defined or accepted but become an accepted industry wide practice
- iii. If it is requested that the Contractor perform land surveying through the use of Digital Orthophotography, then the Contractor shall perform all services in compliance with the appropriate standard unless otherwise specified by the Authorized User which includes but not limited to:
 1. Federal Geographic Data Committee (FGDC) – National Spatial Data Infrastructure (NSDI) Geospatial Positioning Accuracy Standards, Part 3: National Standards for Spatial Data Accuracy – 1998 or most current version
 2. FGDC – FGDC Endorsed ISO Metadata Standards – FGDC Endorsed ISO Metadata Standards – 1998 or most current version
 3. FGDC – United States National Grid – 2001 or most current version
 4. Future Industry standards which may not yet be defined or accepted but become an accepted industry wide practice
 - iv. These missions may require specialized equipment in order to support the mission of the requesting public body. Specialized equipment which may be requested includes but not limited to:
 1. High definition cameras and video recording devices
 2. Aerial Lidar imaging equipment
- c. Road Surveying Missions:
- i. These missions may be used to support the surveying of existing road improvement and assessment projects or support new road planning, design, and assessment projects.
 - ii. This may also include missions related to traffic support studies.
 - iii. These missions may require specialized equipment in order to support the mission of the Authorized User. Specialized equipment which may be requested includes but not limited to:
 1. High definition cameras and video recording devices
- d. Bridge and Tunnel Inspection Service Missions:
- i. These missions may be used to visually inspect existing bridges and support structures for structural deficiencies.
 - ii. These missions may require specialized equipment in order to support the mission of the Authorized User. Specialized equipment which may be requested includes but not limited to:
 1. High definition cameras and video recording devices
 2. Unmanned aerial systems with top mounted cameras or video recording devices
 3. Thermal imaging cameras for the detection of surface defects
- e. Slope Stability Monitoring Missions:

- ii. Missions requested may be related to the detection or location of illegal hunting, poaching, or fishing activities.
 - iii. These missions may require specialized equipment in order to support the mission of the Authorized User. Specialized equipment which may be requested includes but not limited to:
 - 1. High definition cameras and video recording devices
 - 2. Specialized GPS sensors
- E. Agency Media Relations and Marketing Services
 - a. These services may include, but are not limited to, the collection of photographs, videos, and/or data for the purpose of marketing and/or outreach of a variety public body activities. These activities and missions may vary greatly.
 - b. These missions may require specialized equipment in order to support the mission of the Authorized User. Specialized equipment which may be requested includes but not limited to:
 - 1. High definition cameras and recording devices

B. CONTRACTOR REQUIREMENTS

- A. All Offerors shall provide certifications which provide proof that they are 14 CFR Part 107 Certified. If an Offeror is awarded a contract, then the Contractor and/or sub-contractors, which perform UAS flight missions, shall be 14 CFR Part 107 Certified, or as amended. The Contractors are required to provide proof of certification and maintain all proper certifications during the entirety of the contract. Upon request, the Contractors shall provide the most current certification to the requesting agency.
- B. All Offerors shall provide detailed information of all equipment they are currently using and their capabilities. They shall also provide detailed information regarding equipment which is owned and operated by any sub-contractors that they intend to use to support the resulting contract. This shall include any and all sensors and attachments that may be used to support the Service Categories. All Offerors shall specify which Service Categories the equipment they currently own or can deploy is able to support.
- C. All Offerors shall detailed equipment maintenance plans to ensure equipment operability in the event of a service request by an Authorized User.
- D. All Offerors shall provide a brief history of the company and the company's areas of expertise related to this RFP.
- E. All Offerors shall provide examples of missions that have been performed with an emphasis on those performed for public bodies. The missions specified should also highlight the Service Categories the Offeror is seeking qualification.
- F. All Offerors shall provide resumes of key personnel that shall be assigned to work on the contract.
- G. All Offerors shall specify which Service Zone they are able to support requesting Authorized Users. Along with this information, Offerors shall provide information on both standard and emergency response times within their specified Service Zones.
- H. Offerors shall understand that they may be required to receive training from state or local emergency officials in order for them to provide support in the event of a declared emergency.
- I. Contractors shall maintain and provide current certificates of insurance to any Authorized User, which may request it.
- J. Contractors may be required to perform background checks on their employees or certify that their employees have already received a background check in compliance with the requesting public body's laws and/or statutes. Background check requirements may vary from state to state based on each state's requirements, participating addendum, or orders. Contractors will be expected to comply with all background check requirements.
- K. Contractor's and the Authorized Users will agree in writing under what circumstances travel charges may be allowed. Contractors shall work with Authorized Users to adhere

to per diem rates for travel to the fullest extent that it is possible. It is understood that per diem rates for hotels may be difficult to adhere to and Contractor's shall receive prior written approval for any per diem rates that exceed the Authorized User's noted per diem.

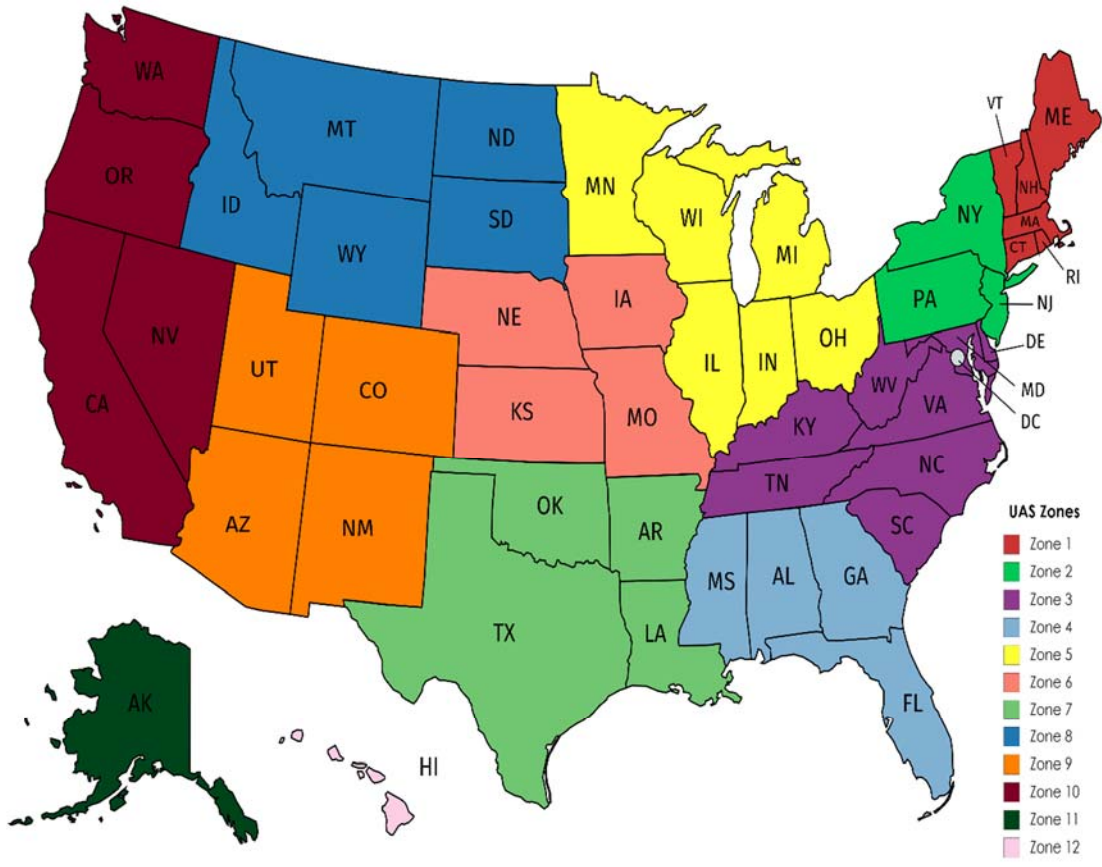
- L. Contractors shall understand that Standard Daily Rates shall mean 8 hours of work performed Monday through Friday, excluding participating state and/or federal holidays. A Standard workday may begin as early as 7:00 AM local prevailing time or end as late as 6:00 PM local prevailing time. The Standard day's work hours may vary by Authorized User and shall be discussed and agreed upon in writing prior to the beginning of any work but shall comply with the Contract's Pricing Schedule and Catalog.
- M. Contractors shall understand that Weekend Daily Rates shall mean 8 hours of work performed Saturday or Sunday. The Weekend day's work hours may vary by Authorized User and shall be discussed and agreed upon in writing prior to the beginning of any work but shall comply with the Contract's Pricing Schedule and Catalog.
- N. Contractors shall understand that Emergency Daily Rates shall mean 8 hours of work performed in response to an Emergency Service Support situation. Whenever possible, the communications for these events should be in writing, in order to establish a clear expectation on the part of both parties. These hours may vary greatly and shall comply with the Contract's Pricing Schedule and Catalog for Emergency Daily Rates.

C. SERVICE ZONE REQUIREMENTS

The Commonwealth of Virginia and the Sourcing Team have divided the United States into Service Zones. The purpose of these Service Zones is to provide Offerors with areas of service that the Commonwealth of Virginia and the Sourcing Team believe to be reasonable for Offerors to be able to cover and respond to service requests. It is understood that awards shall be made based upon these Service Zones and that these awards may not be exclusive. These Service Zones may change based on feedback received from the market place and any changes to the Service Zones will be posted as an addendum to the RFP. It is the expectation of the Commonwealth of Virginia and the Sourcing Team that all Offerors shall be able to service all states located within at least 1 Service Zone. Offerors shall clearly state in their proposal which Service Zones they are able to service. If an Offeror can service a full Service Zone and parts of additional Service Zones, the Offerors shall state which additional States they can service for consideration by the Sourcing Team.

After the contract has been awarded, Contractors may request, at the time of renewal, to add additional Service Zones or States to their contract which will be reviewed and considered by the Commonwealth of Virginia and the Sourcing Team.

The participation noted is based on States which have stated they intend to participate in this contract. It is the intention of this solicitation and corresponding contracts that all Authorized Users across the United States will have access to utilize any awarded contract.



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Service Zone	States	Known Participation
1	CT, MA, ME, NH, RI, VT	
2	NY, NJ, PA	
3	WV, VA, MD, DC, DE, NC, SC, KY, TN	VA, MD
4	GA, FL, AL, MS	GA
5	OH, IN, IL, MI, WI, MN	IL
6	IA, MO, NE, KS	
7	OK, TX, AR, LA	
8	ND, SD, MT, WY, ID	MT
9	UT, CO, AZ, NM	CO, UT, NM
10	WA, OR, CA, NV	CA
11	AK	
12	HI	HI

X. OFFEROR PRICING

A. CATALOG PRICING: Offeror’s proposal should include at a minimum, their catalog for one or more of the Service Zones and Service Categories described in Section IX.C and indicate any tiered discount pricing for multiple days of continued service within each Service Category.

- B. OTHER SERVICES: For any other services an Offeror provides, not otherwise described herein, the Offeror should provide a comprehensive itemized listing of all associated pricing schemes to enable appropriate consideration for possible inclusion in its award. These services will not be scored by the Commonwealth however, Offerors are encouraged to provide additional pricing for additional capabilities. If Other Services are being offered, this pricing shall be included in the Offeror's pricing catalog provided in Tab 6.

XI. GOVERNING LAWS AND REGULATIONS

This procurement is conducted by the Commonwealth of Virginia in accordance with the Virginia Public Procurement Act. The Master Agreement shall be governed by the laws and regulations of the Commonwealth. Venue for any administrative or judicial action relating to this procurement and award shall be in Richmond, Virginia. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in Attachment A Item 34.

XII. RIGHT TO WAIVE MINOR IRREGULARITIES

The Commonwealth in its sole discretion reserves the right to waive minor irregularities in an Offeror's proposal, which include, but are not limited to, corrections of deficiencies or clarification of ambiguities that in the judgment of the Commonwealth do not require a comprehensive proposal rewrite. The Commonwealth reserves the exclusive right, at its sole discretion, to waive certain mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and the failure to do so does not materially affect the procurement.

XIII. ORDERING PROCEDURES

Participating Entities selecting a contractor from a Master Agreement will consider contractor's availability, experience, and pricing; therefore, pricing may not be the sole determining factor in the selection of a contractor.

A. REQUEST FOR SERVICES:

1. Non-emergency Request: When a non-emergency need has been identified, a Participating Entity will contact a contractor to provide a quote. Contractor should provide a written price quote based on Contract pricing within three (3) business days of receiving a quote request. There shall be no commitment on the part of either party nor is any payment authorized to the Contractor until the execution of an order.
2. Emergency Request: In the event of an emergency request, a Participating Entity will contact a contractor to provide a quote. Contractor should provide a written price quote based on contract pricing as soon as possible but no later than 2 hours after the request in order to address the emergency. There shall be no commitment on the part of either party nor is any payment authorized to the contractor until the execution of an order.

B. PROPOSED QUOTE: Pricing shall be all-inclusive except for travel and travel-related expenses, and include all of the contractor's time. Any quote submitted by a contractor should clearly state in detail:

1. Master Agreement number;
2. Description of the services to be performed;
3. Quantity (e.g., days, hours, specialized equipment, etc.);

4. Catalog price and contract discount percentages;
5. Any additional discount offered; and
6. Itemized and total price.

Quotes shall be valid for a minimum of ninety (90) calendar days. The Commonwealth and Participating Entities reserve the right to obtain additional quotes and negotiate pricing from other contractors or any other service provider. A sample "Mission Request Form" is attached separately and may be used by Authorized Users to request pricing for various missions.

- C. E-PROCUREMENT: For purchases within the Commonwealth of Virginia, an Authorized User must issue the order through the Commonwealth's e-procurement website "eVA". Unless otherwise instructed or exempted by DPS, orders placed by Authorized Users within the Commonwealth against a Master Agreement that are not processed through eVA are not in compliance with the terms and conditions of the Master Agreement and Contractor receiving such non-eVA orders shall notify the Authorized User to resubmit their Order through eVA. Purchase Orders must be issued through eVA, for Commonwealth localities, cities, counties, towns and political subdivisions. Authorized Users within the Commonwealth shall indicate the Master Agreement number in the appropriate field on the Purchase Order.

A Contractor shall enable all Participating Entities outside of the Commonwealth of Virginia to use e-Procurement systems specific to their individual state, or through any other system that is mutually agreeable between the parties.

XIV. PAYMENT AND REPORTING INSTRUCTIONS

Contractor shall submit the following reports in electronic format to Participating Entities and/or NASPO ValuePoint during the Contract term or any renewal period at no additional cost. Failure to comply with reporting and payment requirements described in this section may result in payment(s) for unmanned aerial system services being withheld until compliance is confirmed. Participating Entities reserve the right to pursue other appropriate remedies for contractor's failure to comply with the reporting and payment requirements.

A. REPORTING INSTRUCTIONS

1. Mission Completion Reports: Contractor shall provide reports as mutually agreed upon by the Participating Entity and the Contractor to document the mission's completion. All requested reports should be submitted to the Participating Entity no later than thirty (30) calendar days after the mission was completed.
2. NASPO ValuePoint Usage Reports: Contractor shall be required to provide quarterly summary and detailed usage reports to NASPO ValuePoint. Refer to Attachment A Item 7 for information on the usage reporting requirements.

B. PAYMENT INSTRUCTIONS

1. NASPO ValuePoint Administrative Fee: Contractor shall pay an administrative fee to NASPO ValuePoint. Refer to Attachment A Item 6 for information on the administrative fee.
2. Surcharge Adjustment Fee Payment: For services provided within the Commonwealth of Virginia, the Contractor shall be required to provide a Contractor's Quarterly Report of Sales and a Surcharge Adjustment Fee (SCA) payment. Refer to Attachment C Item 23 for information on the sales report and the SCA fee.

3. EVA Vendor Transaction Fee: Contractor shall pay the vendor transaction fee for each order issued through the Commonwealth's e-procurement website "eVA". Vendor transaction fees are determined by the date the original purchase order is issued and the current fee schedule. Refer to Attachment B Item X entitled "eVA Business-To-Government Vendor Registration, Contracts, and Orders" for more information on eVA fees.

XV. PERFORMANCE MEASUREMENTS AND REPORTING INSTRUCTIONS

Contractor shall submit on a quarterly calendar basis, reports verifying compliance to the following performance measurements to the Commonwealth and Participating Entities:

- A. All completed missions shall be evaluated via customer service surveys or other method conducted by the Contractor with the overall result of 3.5 or above on a 1 (Needs Improvement) – 5 (Excellent) scale. Evaluations, whether written or electronic, must be solicited from Participating Entities for each mission to determine, at a minimum, that:
 1. Stated mission objectives were attained;
 2. Mission was completed within required timeframe; and
 3. Overall customer service
- B. An evaluation rate of seventy-five percent (75%) or higher on all missions shall be required. Contractors unable to meet the required seventy-five percent (75%) evaluation rate may risk the contract not being renewed.

XVI. INVOICES AND METHODS OF PAYMENT

- A. INVOICES: Fully detailed invoices shall be submitted to the Participating Entity at the invoice address designated on the Order after all missions have been completed. No invoice may include any additional fees or charges, except as allowed by the Master Agreement provisions, without prior approval from the Participating Entity. Invoices should provide at a minimum:
 1. Name of Participating Entity;
 2. Name of Participating Entity contact;
 3. Customer number, if applicable;
 4. Invoice number;
 5. Invoice date;
 6. Master Agreement number;
 7. Purchase Order number;
 8. Mission name;
 9. Description and dates of the missions completed;
 10. Description of equipment used;
 11. Catalog price and discount percentage; and
 12. Itemized and total price.

- B. **METHODS OF PAYMENT:** Payment will be made to the Contractor within thirty (30) calendar days of receipt of a valid invoice for all goods and services provided and/or delivery of goods and services, whichever is later; however, payment terms may be negotiated. Participating Entity may pay by check, electronic funds transfer, or charge card.

XVII. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS

It is the Offeror's responsibility to assure that their proposal envelope is received by the time and date indicated at the appropriate location. Proposals submitted elsewhere, including to other state or federal agencies, will not be accepted. The envelope shall be date and time stamped, marked "late" and retained in the procurement file unopened. Proposals will not be accepted by facsimile transmission or by electronic mail. The Offeror shall make no other distribution of the proposal.

In order to be considered for selection, Offerors should submit a complete response to this RFP. There must be:

- a. One (1) original copy so marked; the original copy must contain:
 - i. an ink signature;
 - ii. a complete copy of the solicitation
 - iii. all addenda issued with an ink signature
 - iv. all attachments and any attachment requiring a signature must be an ink signature
- b. One (1) hard copy of the proposal and one (1) electronic copy (removable (thumb) drive preferred) of the proposal must be submitted to the issuing agency shown on the cover page by the due date and time. The electronic copy shall have the proposal as one (1) attachment and the pricing as one (1) attachment. All electronic files shall be in Adobe PDF format.
- c. If the proposal contains proprietary information, submit one (1) electronic copy that DOES NOT contain the proprietary information, and mark it as a REDACTED copy.
- d. No Offeror shall receive an award in a Service Category for which they do not submit the required documentation to include the relevant Service Category pricing scenario.

B. PROPOSAL PREPARATION

An authorized representative of the Offeror must sign any submitted proposal. All required information should be submitted. If an Offeror fails to submit all information requested, the Commonwealth of Virginia may require prompt submission of missing information after the receipt of proposal. Failure to submit all required information may result in a lowered evaluation score of the proposal. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. The Offeror is responsible for all costs of proposal preparation. The Commonwealth of Virginia and NASPO ValuePoint are not liable for any costs incurred in preparing a response to the RFP. Emphasis should be placed on completeness and clarity of content.

Proposals should be organized in the order in which the requirements are presented in the RFP. The proposal should contain a table of contents which cross-references the RFP requirements.

Other proposal format requirements include:

1. The entire RFP, with signature page, must be included in the ORIGINAL proposal and the ELECTRONIC copy of the proposal. Additional copies must include the signed cover page, but need not include the remainder of the original RFP. See Section XVII, entitled "Proposal Preparation and Submission Requirements," Item C, entitled "Specific Proposal Submission Instructions" for submittal requirements.
2. No font smaller than 12 point.
3. 8½ x 11-inch page size (larger pages are allowed for figures or tables, but they should be folded into the overall proposal and used sparingly.)
4. All pages must be numbered.
5. Each copy of the proposal should be bound (not with a rubber band or binder clip only) or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume. When using a three-ring binder, be sure that the binder is large enough to contain the entire document or use multiple binders.

A. Proprietary Information

All executables, user data, materials, meeting minutes, progress reports and documentation shall be submitted to DPS and shall belong exclusively to DPS, and shall be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act provided the Offeror invokes the protections of Section 2.2-4342F of the Virginia Public Procurement Act which provides that:

"Trade secrets or proprietary information submitted by an Offeror, or subsequently the Contractor, in connection with a procurement transaction, shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Offeror or Contractor must invoke the protection of this Section prior to, or upon submission of the data or other materials. The Offeror or Contractor must identify the data or other materials to be protected and justify in writing the explicit reasons that such protection is necessary. Failure to mark the data or other materials as proprietary or otherwise classified, will result in the data or other materials being released to Offerors or to the public as provided in the Virginia Freedom of Information Act."

Offeror shall utilize Attachment D Proprietary Information Identification form for identifying proprietary information. The classification of the entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may cause the proposal to not be considered.

B. Oral Presentation

Offerors who submit proposals in response to this RFP may be required to present an oral presentation of their proposal to the Commonwealth and the Sourcing Team. An oral presentation may provide an opportunity for the Offeror to clarify or elaborate on their proposal submittal. If held, DPS will schedule the time and location of these presentations.

If the Offeror is selected to give an oral presentation, such Offeror may be requested to provide additional copies of their proposal at that time.

Oral presentations are an option of the Commonwealth and the Sourcing Team and may or may not, be conducted. Therefore, proposals must be complete.

C. Specific Proposal Submission Instructions

Proposals should be as thorough and detailed as possible so that the Sourcing Team can properly evaluate the Offeror's capabilities to provide the required goods and/or services. Offerors are strongly advised to provide a model for the Commonwealth's evaluation purposes that represents their solution to all requirements depicted in the RFP, and which is complete, comprehensive, simple and easy to understand. Offerors are required to submit the following items, separated by tabs within the proposal and in sequential order corresponding to the related sections of this RFP:

TAB 1: RFP and Addenda

The complete RFP (without attachments) signed and filled out as required. Also, include an original signed copy of any future addenda to this RFP that may be issued.

TAB 2: Mandatory Requirements

The following items are mandatory requirements and should be denoted as such. Failure to provide these items may cause your proposal to be removed from consideration. This tab shall be Phase 1 of the evaluation process.

1. FAA 14 CFR Part 107 certifications for all potential mission pilots.
2. Unmanned Aerial Systems currently owned including the following information:
 - a) Specifications, including flight times
 - b) Sensors/Attachments
 - c) Maintenance Schedules

TAB 3: Methodology

Offerors shall submit a comprehensive proposal that convincingly and realistically depicts all of their capabilities, qualifications, resources, plans, and processes, which can successfully enable the fulfillment of all the requirements depicted in Section IX, entitled "Statement of Needs." At a minimum, an Offeror should address in separate and distinct sections, each of the Service Zones and Service Categories within each Service Zone being offered and describe the company's approach for providing the goods and/or services therein. The Offeror's proposal should address the following:

1. Primary Service Zone Coverage and Service Categories offered in a table for evaluation.
2. Additional Service Zones and Service Categories offered in a table for evaluation.
3. Response times for standard/routine calls and emergency calls for each Service Zone and Service Categories.
4. Additional mission capabilities which may include Service Categories not specified in the Statement of Needs.
5. Plans for problem solving, response time to customer service / support issues or complaints, and methodology for resolutions.

6. Explain safety training protocols for public body employees acting as mission observers.
7. Provide contact information for key representatives assigned to the Commonwealth during the contract periods to include sales representatives, technical support, emergency contacts, e-commerce support, billing, reporting, and customer service.
8. Describe procedures and systems that support e-procurement, customer order-entry and data.

TAB 4: Qualifications and Experience of Offeror

At a minimum, an Offeror should address in separate and distinct sections, each of the Service Zones and Service Categories within each Service Zone being offered and describe your firm's background, experience, and qualifications related to the Offeror's proposed Service Categories that should include, but not be limited to, the following:

1. Organizational Structure
 - a. Provide a detailed written narrative statement of the firm's organizational structure and history, locations, including the principals and their background.
 - b. If the company is a wholly-owned subsidiary of a 'parent' company, then it must provide all information required on both firms.
 - c. Include the legal name and address and the legal form of company (partnership, corporation, joint venture, etc.)
 - d. If proposing in a joint venture, then identify all members of the joint venture and provide all information required within this section for each member of the venture.
 - e. In all cases, provide addresses of affiliates, subsidiaries or satellite service locations that will be used to support this project.
2. Demonstrated Knowledge and Experience
 - a. Provide a detailed narrative describing the firm's qualifications and background in providing these types of Service Categories.
 - b. Describe specialized experience in the type of services requested in the Statement of Needs and current tasks, along with demonstrated knowledge and experience in the Service Categories outline therein.
 - c. Describe your firm's experience providing similar services with an emphasis on services provided to public bodies. The missions described should highlight the Offeror's abilities in the Service Categories for which they are proposing.
3. Personnel Experience
 - a. Describe the experience of the personnel assigned to work on the contract.
 - b. Provide a Resume of the personnel assigned to work on the contract.
 - c. Provide mission history and flight logs by employee.
4. Litigation
 - a. Disclose any information about pending legal proceedings or business litigation against your firm, any officer, or principal. If necessary, provide an explanation and indicate the current status or disposition, not to exceed two (2) pages.

TAB 5: References

Provide a minimum of three (3) references. Preferably, these references would have active accounts maintained over the past two (2) years. Include contact information, phone number and email address of current contacts. See Attachment F, entitled "Vendor Data Sheet."

TAB 6: Proposed Price Plan

The Commonwealth will evaluate pricing scenarios provided in Attachment I for award purposes. Each scenario response will be evaluated and scored based on Section XVIII, RFP Evaluation Process, Phase 3. It is understood that the pricing scenarios name locations which the Offeror may not service. It is the intent of the Commonwealth of Virginia and the Sourcing Team that the Offerors use the scenarios to provide pricing based on Service Zones which the Offeror is seeking award. The Offeror shall label each pricing scenario to which they are responding. The Offeror shall provide their best offered pricing based on the Primary Service Zone for which they are seeking award. If an Offeror is proposing to service multiple zones, the Offeror shall submit pricing scenario responses for those additional Service Zones, if the Offeror charges a rate which is different from their Primary Service Zone.

In addition to the pricing scenarios, the Offeror shall also provide a complete pricing catalog for all services offered within the proposed Service Category. This catalog should include but not be limited to the following Service Category Pricing:

1. Emergency Rates, for all personnel classifications, including daily and hourly as well as any tiered discount rates based on multiple days of service, for Emergency Support Services
2. Weekend Rates, for all personnel classifications, including daily and hourly as well as any tiered discount rates based on multiple days of service
3. Standard Daily Rates, for all personnel classifications, including daily and hourly as well as any tiered discount rates based on multiple days of service
4. Rates per additional hour during an emergency, weekend, and standard daily call
5. Any special rates regarding special weather conditions such as fog, rain, snow, wind, etc.
6. Any service rate differences that occur based on the inclusion of Service Zones outside of the Offeror's primary Service Zone.
7. UAS and specialized equipment rates, as applicable

TAB 7: Attachments

Include attachments required in the RFP as outlined:

Attachment D: Proprietary Information to be included in this section

Attachment E: Exceptions to RFP

Attachment F: Vendor Data Sheet to be included in Tab 5 "References".

Attachment G: Small Business Subcontracting Plan to be included in this section.

Attachment H: State Corporation Commission form to be included in this section.

Attachment I: Pricing Scenarios to be included in Tab 6 "Proposed Price Plan".

Attachment J: NASPO ValuePoint Intent to Participate State List

Attachment K: Sample Mission Request Form

TAB 8: Appendices, Data and Other Submissions

Include any other appendices, data and other information necessary to support your proposal.

TAB 9: NASPO ValuePoint Required Submission Information

The NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum.

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Attachment A and Lead State specific terms and conditions required to execute a master agreement, the statement of need and selected portions of the Offeror's Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offeror will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment A.

1. Offeror must include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (Attachment A).
2. **Insurance:** To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 20 of the NASPO ValuePoint Master Agreement Terms and Conditions. Describe your insurance or plans to obtain insurance satisfying the requirements in Section 20.
3. **NASPO ValuePoint Administrative Fee and Reporting Requirements:** To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions.

Offeror shall identify the person responsible for providing the mandatory usage reports. This information must be kept current during the contract period. Contractor will be required to provide reporting contact within 15 days of Master Agreement execution.

4. **NASPO ValuePoint eMarket Center:** To be eligible for award, the Offeror agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and SciQuest, doing business as JAGGAER (and any authorized agent or successor entity to JAGGAER) to integrate its presence in the NASPO ValuePoint eMarket Center either through unique ordering instructions. Refer to Attachment A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.

Those terms and conditions require as a minimum that the Offeror agrees to participate in development of ordering instructions. Proposer shall respond how they can support the eMarket Center in the Proposal through either a hosted catalog or punchout solution.

5. **Promotion of the NASPO ValuePoint Master Agreement:** The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint Cooperative Procurement Program. Technical and management evaluation factors may include evaluation of: the likely effectiveness of the Offeror's promotion of the Master Agreement; the Offeror's understanding of and approach to administration of and reporting under the

Master Agreement; the risk that Offeror's contractual obligations to other procurement cooperatives' may impede achievement of the objectives of the ValuePoint cooperative procurement program, in which case awards could be Lead-State-Only awards. In this regard,

- a. Briefly describe how you intend to promote the use of the Master Agreement.
 - b. Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will you integrate the CPO's permission into your plan for promoting the agreement?
 - c. Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of your method of promoting agreements of this nature, how would you clarify any questions regarding the scope the agreement with respect to any potential order?
 - d. Through its Cooperative Development Coordinators and Education & Outreach team, NASPO ValuePoint assists Lead States by engaging contractor's in strategies aimed at promoting master agreements. What opportunities and/or challenges do you see in working with NASPO ValuePoint staff in this way?
 - e. Does your company participate in any other public procurement cooperatives? If yes, explain any restrictions or requirements that other cooperatives place on your company for participating with NASPO ValuePoint.
6. **Usage Fee and Reporting Plan:** Offerors shall include in their proposals a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately.

The plan shall include but not be limited to the following components:

- a. Offerors shall identify the person responsible for providing the mandatory usage reports.
- b. Offerors shall identify the method and frequency in which usage data will be collected from authorized distributors.
- c. Offerors shall identify the method in which usage fees will be distributed to NASPO ValuePoint and applicable Participating States.
- d. Offerors shall identify the method in which up-to-date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.

D. SUBMISSION ADDRESS INSTRUCTIONS:

- a. For All Proposals: Offeror must ensure the RFP name and number are clearly visible on the outside the envelope. The envelope should also provide the following information:
 - i. Name of Offeror;
 - ii. Street or Box Number, City, State, Zip Code;
 - iii. Solicitation Close Date and Time, Solicitation Number, Solicitation Title.

If a proposal response is not contained in envelopes as described above, the Offeror risks that the envelopes may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other unrequested correspondence or other proposals should be placed in the envelope.

THE COMMONWEALTH SHALL NOT BE RESPONSIBLE IF A PROPOSAL IS NOT DELIVERED BY THE DUE DATE AND TIME.

LATE PROPOSALS WILL NOT BE CONSIDERED.

Amendments to the RFP may be issued by the Commonwealth, and Offeror acknowledgments of amendments must be received at Bid Receiving either prior to the proposal due date and hour or attached to the Offeror's proposal. Before submitting a proposal, Offeror should check the eVA website to confirm if any amendments have been issued.

- b. Express Delivery Service: Send the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6th Floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror is cautioned to not rely on the dependability of Next Day Delivery Service.
- c. Hand-Delivered Proposals: Deliver the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 6th Floor Receptionist/Bid Receiving, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for parking, walking to the building, and security screening procedures. All visitors are required to enter the building through the Darden Garden entrance facing the State Capital (not the Broad Street entrance). When entering the Patrick Henry Building, visitors will be required to:
 - Present a valid and current picture ID;
 - Pass through metal detectors / security wands; and
 - Permit all bags to be searched by Capital Police or security personnel.
- d. U.S. Postal Service: Mail the proposal to the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply, 1111 East Broad Street, Richmond, VA 23219. Offeror must allow ample time for the mailing envelope containing the proposal response to be processed through the Commonwealth's Mail Security Processing System prior to delivery to Bid Receiving.

XVIII. RFP EVALUATION PROCESS

- A. PHASE 1 PROPOSAL COMPLIANCE EVALUATION:** In the initial phase of the evaluation process, the Commonwealth will review proposals for full compliance with minimum requirements listed on Tab 2, the RFP instructions, and the mandatory terms and conditions set forth within the RFP.

Using the **Pass/Fail method**, proposals not conforming to RFP requirements listed above, may be eliminated from further consideration. The items listed in Tab 2 are mandatory and shall be evaluated during Phase 1.

- B. PHASE 2 TECHNICAL PROPOSAL EVALUATION:** In Phase 2 of the evaluation process the Commonwealth and Sourcing Team will evaluate the proposals that passed Phase 1 against the weighted evaluation criteria and recommend the most responsive Offerors to the Statement

of Needs requirements and needs of the Commonwealth and Participating Entities as described herein.

Evaluation Criteria and Weights (Point Value):

	EVALUATION CRITERIA AND DESCRIPTION	POINT VALUE
1.	Methodology, to include: a. Mission Capabilities (125 points) b. Customer Service (85 points) c. Response Times (65 points)	275
2.	Qualifications and Experience, to include: a. Experience of person's assigned to the contract (75 points) b. Organizational Structure (50 points) c. References (50 points) d. Demonstrated Knowledge (50 points)	225
3.	Small Business Subcontracting Plan	200

C. PHASE 3 PRICING PROPOSAL EVALUATION:

4.	Pricing based on each Service Category pricing scenario max possible points	300
5.	TOTAL POSSIBLE PROPOSAL POINT VALUE	1000

Pricing Proposal Evaluation Method (Ratio Calculation): For each proposal response received, the Commonwealth will calculate the points awarded based on each Service Category pricing scenario in each Service Zone. The lowest priced response for each Service Category pricing scenario in each Service Zone, shall receive the maximum points assigned for that scenario. The other responses shall receive a portion of the points based on a ratio calculation. If the Offeror is unable to offer the Service Category described in the pricing scenario, then the Offeror will not be considered for that Service Category.

The point computation formula for each Service Category pricing scenario is:

$$\frac{\text{Lowest Pricing Proposal}}{\text{Offeror's Pricing Proposal}} = \% \text{ Factor} \times 300 \text{ points} = \text{Points Value Assigned}$$

XIX. NEGOTIATIONS, CONTRACT AWARD PROCESS AND POST AWARD FORMALIZATION OF THE MASTER AGREEMENT

Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals. Price shall be considered, but need not be the sole determining factor. Negotiations shall be conducted with the Offerors so selected. After negotiations have been conducted with each offeror so selected, the Commonwealth shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

The Commonwealth reserves the sole right during negotiations of any Master Agreements to adjust terms and conditions that would not, in its sole judgment, have a material effect on price, schedule, Statement of Needs, scope of work, or risk to the Commonwealth and Participating Entities, with materiality defined in terms of the effect on the evaluation and award. In any event, the Commonwealth reserves the right to accept changes that are more favorable to its requirements. If no Master Agreement is reached with an Offeror, then the Commonwealth may negotiate with any other Offerors, or make no award under this RFP.

DPS will issue a Notice of Intent to Award (NOIA) notification electronically in the Commonwealth's eVA, e-Procurement system. Any resulting award document from this RFP will be a NASPO ValuePoint Master Agreement that is negotiated between the Commonwealth and selected Offeror(s) incorporating by reference this RFP, and all requirements and terms and conditions herein, together with an Offeror's proposal, as negotiated.

Any offeror may protest the award of a Master Agreement in accordance with § 2.2-4360 of the *Code of Virginia*.

Proposal files are public records and will be available for review at the issuing office of the Commonwealth's Division of Purchases and Supply by appointment with the DPS Statewide Sourcing & Contracting Officer named on the cover page of this RFP.

This RFP may be cancelled or proposals rejected at any time prior to any award if the Commonwealth determines that such action is in the collective best interests of the Participating Entities, and it is not required to furnish a statement of the reasons that a particular proposal was not deemed to be the most advantageous (*Code of Virginia* § 2.2-4359D).

XX. NASPO VALUEPOINT MASTER AGREEMENT STATEMENT OF COMPLIANCE

Any NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum. The Master Agreement will include, but is not limited to, the Commonwealth of Virginia General Terms and Conditions in Attachment B and the NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A (which are required to execute a Master Agreement), the Statement of Needs and selected portions of the Offeror's Proposal.

XXI. ATTACHMENTS LIST

- A. [NASPO ValuePoint Master Agreement Terms and Conditions](#)
- B. [Commonwealth of Virginia – Contract General \(Mandatory\) Terms and Conditions](#)
- C. [Commonwealth of Virginia – Contract Special \(Desirable\) Terms and Conditions](#)
- D. [Proprietary Information](#)
- E. [Exceptions to RFP](#)
- F. [Vendor Data Sheet](#)
- G. [State Corporation Commission Form](#)
- H. [Small Business Subcontracting Plan](#)

Pricing Schedule – Attached Separately

Pricing Scenarios 1-5 – Attached Separately

Sample Mission Request Form – Attached Separately

Additional Terms and Conditions – Attached Separately

State of California

State of Illinois

State of Maryland

State of Montana

State of Utah

ATTACHMENT A



NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications, which permanently reside on a computing device.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement or **Master Ordering Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the

National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

- a. The initial term of this Master Agreement is for 2 year. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.
- b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org/Account/Login?ReturnUrl=%2F>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity

name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Attachment L.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO ValuePoint Cooperative Program Marketing and Performance Review

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans,

target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years after] award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

9. NASPO ValuePoint eMarket Center

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the

quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 90 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

12. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

13. Ordering

- a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- b. Purchasing Entities may define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - (1) The services or supplies being delivered;
 - (2) The place and requested time of delivery;
 - (3) A billing address;
 - (4) The name, phone number, and address of the Purchasing Entity representative;

- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15. Inspection and Acceptance

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

16. Payment

Unless otherwise agreed upon in a Participating Addendum, payment after acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

19. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

General Provisions

20. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the

required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

21. Records Administration and Audit.

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

22. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately

compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

23. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

24. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, and other third parties.

25. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

26. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

27. Cancellation

Cancellation of this Master Agreement is governed by Attachment C, section 3, Cancellation of Contract. Any Participating Entity may cancel its participation upon 30 days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any

warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

28. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

29. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 10 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of

default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

e. Attachment C, including the Contractual Disputes provision in section 13, shall apply only to Participating and Purchasing Entities in the Commonwealth of Virginia unless those provisions are incorporated by reference into a Participating Addenda or Orders by other entities.

30. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

31. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

32. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

33. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

34. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

35. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

36. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

ATTACHMENT B

COMMONWEALTH OF VIRGINIA GENERAL TERMS AND CONDITIONS

The following terms and conditions are MANDATORY and shall be included verbatim in any Contract awarded by the Commonwealth.

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the "I Sell to Virginia" tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.
- If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves

the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. **To Subcontractors:**

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
 3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
 4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and

applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- Z. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- AA. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

ATTACHMENT C

COMMONWEALTH OF VIRGINIA SPECIAL TERMS AND CONDITIONS

The following terms and conditions may be included in any Participating Addendum between the Commonwealth of Virginia and a Contractor for any resulting contract. Other Participating Entities may have their own provisions.

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
2. **AWARD TO MULTIPLE OFFERORS:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.
3. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
4. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple purchase order(s) with the applicable eVA transaction fee assessed for each order.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

5. **TERM:** The initial contract term will be for a period of two (2) years from the date of award. All Orders and related documents shall survive the period of performance stated in this section until such time as all Orders (executed prior to the expiration date of the Contract) have been completely performed.
6. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for four (4) successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the other services category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
 2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the other services category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
7. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at any time during the period of the contract. The addition or deletion of authorized users in the Commonwealth of Virginia not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.
8. **PRICE PROTECTION/ADJUSTMENTS:** The Catalog prices and negotiated offeror's Proposed Pricing Schedule shall be firm-fixed for the initial term after award of the Master Agreement. The Commonwealth acknowledges that a catalog is subject to change over time; therefore, after the initial term, the first catalog price adjustment request may be allowed at the time the Contractor normally publishes their annual price adjustment. Subsequent price adjustments may be allowed no earlier than 365 days from the effective date of the prior price adjustment. Contractor shall give not less than ninety (90) calendar days advance notice of any requested price adjustment to the DPS Statewide Strategic Sourcing Officer. Documentation shall be supplied with the Contractor's request for adjustment which will verify that the requested price adjustment is general in scope and not applicable solely to the Commonwealth of Virginia. The requested price adjustment will be reviewed and verified for reasonableness to the satisfaction of the DPS Statewide Strategic Sourcing Officer. The US Department of Labor's Bureau of Labor Statistics' (BLS) Consumers Price Index "Other Services" category for All Urban Consumers (CPI-U)* section or other appropriate indices for the latest 12 months for which statistics are available may be used as guides to determine price increases or decreases. The DPS Statewide Strategic Sourcing Officer will issue a Contract Modification establishing the effective date of any approved price adjustment which will be at the beginning of the calendar month following the end of the full 60-day notification period or approval date. Price increases after placement of order will not be accepted and the Contractor shall fill all Purchase Orders received prior to the effective date of the price adjustment

at the old contract prices. Should the price decrease between receipt of the order and shipment of the order, the Contractor shall invoice at the new lowest discounted price.

Discount percentage decreases are prohibited during the term of the contract to include all renewals; however, discount percentage increases are subject to implementation at any time and shall be immediately conveyed to the Master Agreement. Otherwise, discount percentages will remain firm-fixed throughout the term of the contract to include all renewals. Authorized Users will apply the firm-fixed discount percentage to the approved catalog in effect and has been incorporated as part of the contract by the DPS Statewide Strategic Sourcing Officer at the time the order is placed.

9. **ADDITION/DELETION OF ITEMS AND SERVICES:** This contract may be modified in order to add and/or delete items and services as deemed necessary by the Commonwealth of Virginia which are of like or similar nature. Such modifications may only be made by the representatives who are authorized to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.
10. **BREACH:** The Contractor shall be deemed in breach of this Agreement if the Contractor:
- a. Fails to deliver any Product or Service by the specified delivery date;
 - b. Repeatedly fails to respond to requests for required service within the time limits set forth in this Agreement;
 - c. Fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten (10) days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or
 - d. Fails to provide a written response to the Commonwealth's Show Cause Notice within ten (10) days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was from causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

11. **ORDERS:** Authorized Users / Participating Entities may order Services from this Contract by one of the following methods:
- a. eVA: All Commonwealth of Virginia Authorized Users shall issue an order through the Commonwealth's eVA eProcurement website portal
 - b. Participating Entity e-Procurement systems: NASPO ValuePoint Participating Entities may issue orders through their own entity-specific e-Procurement system, as specified in any fully executed Participating Addendum
 - c. Purchase Order (PO): An official and duly authorized purchase order form issued by a Participating Entity external to any e-Procurement system.

This ordering authority is solely limited to issuing orders for Products or Services available

under this Agreement.

Any Order placed prior to termination or expiration of the Agreement, shall survive such expiration or termination, and the provisions of this Agreement shall continue to have full force and effect for the duration of any Order term.

The Contractor shall report all orders received to the DPS Statewide Strategic Sourcing Officer in accordance with the Reporting requirements delineated herein.

12. **ORDER CHANGES**: Any changes to an Order after submission to the Contractor must be made between the Authorized User and Contractor. Both parties shall agree in writing to any changes in the scope of work and any increase or decrease in the price that may result as a consequence of the changes. No Order changes may be made verbally. Only the Authorized User has the right to issue a change to any Order.
13. **CONTRACTUAL DISPUTES**: In accordance with Section 2.2-4363 of the *Code of Virginia*, Contractual claims, whether from money or other relief, shall be submitted in writing to the Authorized User no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to the Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the *Code of Virginia* nor institute legal action prior to receipt of the Commonwealth's decision on the claim, unless the Commonwealth fails to render its decision within thirty (30) days. The decision of the Commonwealth shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, *Code of Virginia*, or the administrative procedure authorized by Section 2.2-4365, *Code of Virginia*.

The Commonwealth or any Authorized User, and their officers, agents and employees, including without limitation, the Contracting and Ordering Officers, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent of the Commonwealth agency or Authorized User that is purchasing and receiving the goods or services in question and need not be joined as a party to any dispute that may arise there under.

In the event of any breach by the Commonwealth or any Authorized User, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any Services hereunder.

For any Order issued by an Authorized User, the User is responsible to fully and independently administer any Services provided under the Agreement to include contractual disputes, and invoicing and payments, without direct administration from DGS. Neither the Commonwealth nor DGS shall be held liable for any costs or damages by any other User as a result of any authorization by the Contractor to use the Agreement.

By entering into this Agreement, the Contractor hereby certifies and warrants that neither the Commonwealth nor DGS shall be held responsible or accountable for any acts or omissions of any Authorized User, and shall not be considered in default of this Agreement, no matter the circumstances. The use of the Agreement does not preclude any participating Authorized User from using other agreements or competitive processes as their needs may require

charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. The levels are delineated below and vendors must establish their card account at Level 2, which is mandatory, or Level 3, which is optional. Information on the various levels for the Visa Purchase Card is indicated below.

Level 1 - vendors provide basic charge card purchase information, including but not limited to the data listed below. By passing “Basic Data”, the vendor has a standard interchange cost.

Supplier Name
Merchant Category Code
Date
Total Purchase Amount

Level 2 - vendors provide additional information to the Level 1 elements, including but not limited to the data listed below. By passing Level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accept the Visa Card.

Customer Code (PCO Number from eVA); and
Vendor Tax ID

Level 3 - vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including but not limited to the data listed below. By passing Level 3 (**optional**) data which is considered Superior data, the vendor will receive the lowest interchange costs.

Item Description
Item Quantity
Item Unit of Measure
Product Code
Freight Amount
Extended line Item Amount

19. PROPOSAL ACCEPTANCE PERIOD: Any proposal in response to this solicitation shall be valid for 180 calendar days. At the end of the 180 calendar days the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

20. FINANCIAL WARRANTY: Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the “financial deal”) applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body **in Virginia** for the same service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS’s option, sign an amendment to this Contract, so that an equivalent financial deal for the affected service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS’s request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to

the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.

21. PRIME CONTRACTOR RESPONSIBILITIES: Contractor shall be responsible for completely supervising and directing the work under the Contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the Prime Contractor. Contractor agrees that he is as fully responsible for the acts and omissions of his Subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

22. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, an Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the Virginia State Corporation Commission (SCC). Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why the Offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the Offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

23. REPORTS/SURCHARGE ADJUSTMENT FEE (SCA) FOR SALES IN THE COMMONWEALTH OF VIRGINIA:

CONTRACTOR'S QUARTERLY REPORT OF SALES: Contractors shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. See attachment to this solicitation for the report template which identifies the information to be provided. Reports shall be provided no later the 15th of the next month following the end of the calendar quarter, reporting total invoiced sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the contract officer and to the following email address: vssireport@dgs.virginia.gov. Failure to submit information in the required format and time may result in cancellation of the awarded contract.

B. SURCHARGE ADJUSTMENT: The contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this contract. **DGS will not issue invoices or statements.** The contractor must remit the SCA fee by the last day of the month following the end of the calendar quarter. The SCA fee equals two percent (2%) of the quarterly reported total invoiced sales. The SCA fee amount due must be paid by check with identification of "Contract Number," "Report Amounts," and "Report Period" on either the check stub or other remittance material. DGS may, at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates the agreement, then the payment shall be made by check as described herein.

Checks shall be payable to: Treasurer, Commonwealth of Virginia.

Checks shall be mailed to:
DGS/Division of Purchases and Supply

ATTN: SCA Coordinator
PO Box 1199
Richmond, VA 23218-1199

If the full amount of the SCA fee is not paid within 30 calendar days of due date, it shall constitute a debt that the Contractor is obligated contractually to pay to the Commonwealth of Virginia, and the Commonwealth may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in termination or cancellation of this contract.

24. SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING:

- A. Submission of Small Business Subcontracting Plan: It is the goal of the Commonwealth that 42% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. The contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the bidder/offeror shall note such on the Small Business Subcontracting Plan. No bidder/offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals.
- B. Evidence of Compliance with Small Business Subcontracting Plan: Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.
- C. Prime Contractor Subcontractor Reporting:
1. Each prime contractor who wins an award greater than \$100,000, shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are DSBSD-certified businesses or ESOs. The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (Businesses that are DSBSD-certified small, women-owned, minority-owned, Service Disabled Veteran, or Employment Services Organization) and type of product/service provided, at the frequency required.
 2. In addition each prime contractor who wins an award greater than \$200,000 shall deliver to the contracting agency or institution on a quarterly basis, information on use of subcontractors that are not DSBSD-certified businesses. The contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided, at the frequency required.

- 25. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the *Code of Virginia*. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
- 26. SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- 27. AUDIT – INFORMATION SECURITY:** Without limiting Contractor's obligation of confidentiality as described herein, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure security and confidentiality of any Commonwealth or other Authorized User's Data; (b) protect against any anticipated threats or hazards to the security or integrity of any Commonwealth or other Authorized User's Data; (c) protect against unauthorized disclosure, access to, or use of any Commonwealth or other Authorized User's Data; (d) ensure the proper disposal of any Commonwealth or other Authorized User's Data; and, (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case shall the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the Commonwealth or any other Authorized User.
- A. *Audit by Contractor. No less than annually, Contractor shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the Commonwealth and any Authorized User.*
- B. *Right of Audit by the Commonwealth and any Authorized User. Without limiting any other audit rights of the Commonwealth or any Authorized User, the Commonwealth or other Authorized User shall have the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the providing of the Services, on an ongoing basis from time to time and without notice, the Commonwealth or an Authorized User, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by Authorized User, Contractor agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by Authorized User regarding Contractor's data privacy and information security program.*
- C. *Audit Findings. Contractor shall implement any required safeguards as identified by the Commonwealth or other Authorized User or by any audit of Contractor's data privacy and information security program.*

Commonwealth's Right to Termination for Deficiencies. The Commonwealth reserves the right, at its sole determination, to immediately terminate the Contract without limitation and without liability if it reasonably determines that the Contractor fails or has failed to meet its obligations under this Section. The foregoing is applicable to any Authorized User in regards to any Order placed under the Agreement, with the written concurrence of the Commonwealth.

- 28. OVERSIGHT OF THIRD PARTY SERVICE PROVIDERS:** This Standard recognizes that agencies may procure IT equipment, systems, and services covered by this Standard from third parties. In such instances, Agency Heads remain accountable for maintaining compliance with this Standard and agencies must enforce these compliance requirements through documented agreements with third-party providers and oversight of the services provided.

The Commonwealth's Information Security Standard, SEC501-09, Section 1.1 requires that State Agency Heads remain accountable for maintaining compliance with the Security Standard in instances where IT equipment, systems, and services are outsourced to third-party service providers, and that they must enforce compliance with the Security Standard through documented agreements and oversight of services provided. Furthermore, as of September 2015, Topic 10305 of the Commonwealth's Accounting Policies and Procedures (CAPP) Manual requires the Commonwealth to have assurance over outsourced operations and that State Agencies must maintain oversight over third-party service providers through adequate interaction with their third-party service providers to gain an understanding of the service provider's control environment and assurance over their outsourced operations.

Therefore, for any third-party hosted services provided to the Contractor, the Contractor shall annually provide the DGS Contracting Officer with documentation in the form of an independently provided Service Organization Control (SOC) 1 Type II audit of the Contractor's physical and environmental security controls, and for all third-party managed computer hosting services facilities which includes operations monitoring, infrastructure administration, environmental controls, and restricting of physical access to any data center that hosts Commonwealth and/or Authorized User data.

The Commonwealth's Information Security Standard, SEC501-09 is at the following URL: <http://www.vita.virginia.gov/default.aspx?id=537>.

The Commonwealth's Accounting Policies and Procedures Manual is at the following URL: <http://www.doa.virginia.gov>.

- 29. TECHNOLOGY IMPROVEMENTS:** The Commonwealth recognizes the rapid pace of development in emerging technology with the need to refresh Equipment or Services to accommodate technological changes. It is the Commonwealth's intent to actively seek solutions that allow all Authorized Users to retain their investments in current Systems, Products or Services, while gaining access to the latest developments in technology in the most cost effective manner. In so doing, the Commonwealth seeks to provide all Authorized Users with access to Systems, Products and Services that are representative of the most recent, innovative, and/or proven technologies available.

Therefore, Contractor agrees to provide DGS with written notification of any known innovative System, Product or Services, or other changes at least sixty (60) days, or sooner if agreed to by DGS in writing, in advance of any proposed date for implementing such changes that may affect the features, functionality, or method of operation or delivery of any System, Product or Service offered in scope under this Agreement. Such changes shall take place only after review by DGS, and upon the written mutual agreement of both parties in accordance with the provisions for such additions.

Upon DGS' request, the Contractor shall promptly provide all documentation needed to evaluate the impact of such changes.

- 30. SENSITIVE DATA:** Sensitive data (Sensitive Data) is defined as any data derived from an Authorized User under this Agreement of which the compromise with respect to confidentiality, integrity, and/or availability which could adversely affect Commonwealth or any Authorized User's interests, or the conduct of any Commonwealth or any Authorized User's programs, or the personal privacy to which any individual citizen is entitled. When Sensitive Data must be collected and stored, then Contractor shall ensure that appropriate safeguards are implemented commensurate with the level of risk and sensitivity and that all necessary safeguards are given both to the controls over Sensitive Data in motion (being transmitted) and Sensitive Data at rest (stored). Examples of Sensitive Data types includes, but is not limited to: personally identifiable information (PII), which includes information that describes, locates or indexes anything about an individual citizen, including financial transactions, social security numbers, medical history, ancestry, religion, or any other personal matter specific to an individual.

To render video data inaccessible and unusable to another user or to a repair technician, the DV-1 or 4RE administrative menu allows the hard drive to be reformatted, which will result in all video being unavailable, inaccessible, and unusable to repair technicians or other users that may be issued the camera system. If hard drives are not going to be put back in to service, they are permanently disabled using a drill press prior to recycling.

- 31. OWNERSHIP OF DATA:** Any Authorized User's data collected, used, processed, stored, or generated as the result of the use of the Contractor's Systems or Services, including Sensitive Data or otherwise, shall remain the sole and exclusive property of the Authorized User, and all right, title, and interest in the same is reserved by the Authorized User. This Section shall survive the termination of this Agreement. Any such data shall be known and strictly treated by Contractor as Confidential Information of the Authorized User.
- 32. CONFIDENTIALITY OF DATA:** Contractor assures that all personal facts, information, data, or circumstances collected relating to the Commonwealth or any Authorized User staff, citizens, or others will be held strictly confidential and safeguarded, during and following the term of this Contract, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, and will not be divulged without the written consent of the Commonwealth, Authorized User, and individual, and only in accordance with federal law or the Code of Virginia. Any breach or suspected breach in the security of such data information shall be handled in accordance with the provisions herein under the section entitled Security Requirements. The Contractor and their employees working under this Contract may be required to sign a confidentiality statement.
- 33. SECURITY REQUIREMENTS – VITA:** Contractor certifies and warrants that all Systems, Products and Services provided pursuant to this Agreement shall conform to all applicable federal, state and local laws and regulations governing data security and the operations that govern these Systems, Products and Services. Such conformance specifically includes the Information and Data Security Policies, Standards, and Guidelines issued by the Commonwealth through the Virginia Information Technologies Agency (VITA) as delineated at the following, or any then-current, URL: <http://www.vita.virginia.gov/default.aspx?id=537> or any other information technology or Sensitive Data security requirements established by VITA and pertinent to the Systems, Products and Services.

Should an Authorized User have or establish additional security procedures pertinent to the Systems, Products or Services, then Contractor agrees to work with the Authorized User to ensure that Systems, Products or Services also conform to such requirements, as may be mutually agreeable

between the Authorized User and the Contractor.

For any individual Authorized User location, security procedures may include, but not be limited to: background checks, records verification, photographing, and fingerprinting of Contractor's employees or agents. Contractor may, at any time, be required to execute and complete, for each individual Contractor employee or agent, additional forms which may include non-disclosure agreements to be signed by Contractor's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of confidential or Personal information by the Contractor or an employee or agent of Contractor shall constitute a breach of its obligations under this Section and the Contract.

Contractor shall immediately notify DGS and VITA points-of-contact listed in Attachment A, and the Authorized User point-of-contact identified in any Order, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, or any other Sensitive Information, as defined herein, including but not limited to insurance data, social security number, date of birth, etc., which may be collected in the performance of the Contractor's Systems, Products or Services under this Agreement, or as may be provided to the Contractor by the Commonwealth or any Authorized User. Contractor shall provide the Commonwealth, through VITA, or any Authorized User, as applicable, with the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

Contractor shall indemnify, defend, and hold the Commonwealth, DGS, VITA, the Authorized User, or their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, DGS, VITA, the Authorized User, or their officers, directors, agents or employees, on account of the failure of Contractor to perform its obligations pursuant this Section.

To the extent applicable, and for any Contractor Services that may be agreed upon to be provided through any separate license agreement (Licensed Services), VITA shall have the opportunity and right to review Contractor's information security program prior to the commencement of such Licensed Services, and from time-to-time during the term of this Agreement.

During the performance of any such Licensed Services, and on an ongoing basis from time-to-time, VITA, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Contractor's information security program. In lieu of an on-site audit, and upon the request by VITA, Contractor agrees to complete, within forty-five (45) days of receipt, an audit questionnaire provided by VITA regarding the Contractor's information security program. Contractor agrees that they shall implement any reasonably required safeguards as identified by any VITA information security program audit.

34. **SECURITY REQUIREMENTS – AUTHORIZED USER:** Contractor shall be responsible to obtain and follow any security policies required by an ordering Authorized User, which may include any applicable IT Security Mobile Devices Policy.
35. **LATEST SOFTWARE VERSION:** Authorized Users will be entitled to the latest version of a software product available under any Order under the Contract. Authorized Users that are currently using an older version of software at the time of order may elect to decline the latest version.

Any software product provided under any Order under the Contract shall be the latest version available as of the date of the Order.

- 36. TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the eVA Order issued by an Authorized User, the Software license(s) identified in the pricing schedule shall continue in perpetuity. The Commonwealth or any Authorized User reserve the rights to transfer all rights under the license from any one entity under its authority, to any other entity within its authority, to which some or all of its responsibilities or functions are transferred.
- 37. SOFTWARE UPDATES/UPGRADES:** Software “updates” (i.e., minor enhancements, additions and substitutions to software, including corrections and bug fixes) are provided at no additional fee, if made commercially available. “Upgrades” (i.e., modifications, additions or substitutions that result in a substantial change, improvement or addition to software), if made commercially available by the Contractor or manufacturer are provided for an additional fee, if applicable with the following exception; if said upgrade becomes available within the first twelve (12) months after purchase, then the upgrade shall be at no additional charge to the Authorized User. The determination of whether a matter involves an update or an upgrade is within the sole discretion of the Contractor. All updates and upgrades made available to the Commonwealth or Authorized User are subject to this Agreement.
- 38. TITLE TO SOFTWARE:** The Contractor represents and warrants that it is the sole owner of any Software provided or, if not the owner, that it has received all legally required authorizations from the owner to license the Software, has the full power to grant the rights required by this Contract and that neither the Software nor its use in accordance with the Contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- 39. WARRANTY AGAINST SHUTDOWN:** The Contractor warrants that the Equipment and Software provided under the Contract shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees or subcontractors shall insert any shutdown device following delivery of the Equipment and Software.

Any Product provided under this Agreement discovered not to be compliant in this regard following Acceptance shall be corrected by the Contractor at no additional cost to the Commonwealth or Authorized User. Failure to correct the deficiency shall subject the Contractor to default or any other remedies available to the Commonwealth.

The Contractor shall not be responsible for correcting product(s) (e.g., hardware, software, firmware) which were not provided under this Agreement or for correcting any previously owned Commonwealth products that are used in combination with the Contractor’s product(s); however, if this Contract identifies any product or sources of data to be used in combination with the product(s) delivered under the Agreement, the Contractor shall be responsible for providing all necessary interface(s) or other appropriate means for assuring that the data output from such other product(s) or source(s) is automatically corrected, before being processed by the Product(s) or System provided by the Contractor under this Agreement.

ATTACHMENT F
COMMONWEALTH OF VIRGINIA
RFP# E194-79435

VENDOR DATA SHEET

Note: The following information is required and failure to submit all information requested may result in the Commonwealth requiring prompt submission of missing information.

1. Qualification: The vendor must have the capability and capacity in all respects to fully satisfy all contractual requirements.
2. Vendor's Primary Contact:
Name (Print): _____ Phone: _____
3. Years in Business: Indicate the length of time you have been in business providing this type of goods or services:
_____ Years _____ Months
4. Vendor Information: eVA Vendor ID or DUNS Number: _____
5. Provide information of at least three (3) current or recent accounts, either commercial or governmental, that your business has provided similar goods and/or services.
 - a. Company: _____ Contact: _____
Address: _____
Phone : (____) _____ Email: _____
Dates of Service: _____ \$ Value: _____
 - b. Company: _____ Contact: _____
Address: _____
Phone : (____) _____ Email: _____
Dates of Service: _____ \$ Value: _____
 - c. Company: _____ Contact: _____
Address: _____
Phone : (____) _____ Email: _____
Dates of Service: _____ \$ Value: _____

I certify the accuracy of this information:

Signed: _____

Title: _____ Date: _____

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ATTACHMENT G

**COMMONWEALTH OF VIRGINIA
RFP# E194-79435**

VIRGINIA STATE CORPORATION COMMISSION FORM

Virginia State Corporation Commission (“SCC”) registration information:

The undersigned Offeror:

is a corporation or other business entity with the following SCC identification number: _____.

-OR-

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

-OR-

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Offeror's out-of-state location)

-OR-

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the *Code of Virginia*.

**** NOTE ****

Check this box if you have not completed any of the foregoing options, but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals.*

Signature: _____

Name: _____
(Print)

Title: _____

Name of Firm: _____

Date: _____

* The Commonwealth reserves the right to determine in its sole discretion whether to allow such a waiver.

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ATTACHMENT H

**COMMONWEALTH OF VIRGINIA
RFP# E194-79435**

Small Business Subcontracting Plan

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential bidders are required to submit a Small Business Subcontracting Plan.

Small Business: "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for bids. This shall also include DSBSD-certified women- and minority-owned businesses when they also hold a DSBSD certification as a small business on the bid due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify under the definitions below.

Certification applications are available through DSBSD online at www.DSBSD.virginia.gov (Customer Service).

Bidder Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form. This includes DSBSD-certified women-owned and minority-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in relation to the bidder's total price for the initial contract period. in Section B.

Section A

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification number: _____ Certification Date: _____

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Section B

Populate the table below to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participations will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation percentages may result in breach of the contract.

B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement

Micro/Small Business Name & Address DSBSD Certificate #	Status if Micro/Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract (\$ or %)